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Committee on Economic, Social and Cultural Rights

Fifty-ninth session

Summary record of the 55th meeting

Held at the Palais des Nations, Geneva, on Wednesday, 21 September 2016, at 3 p.m.

Chair: Mr. Sadi

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The meeting was called to order at 3 p.m.

Consideration of reports (*continued*)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Sixth periodic report of Poland (E/C.12/POL/6; E/C.12/POL/Q/6 and Add.1)

1. *At the invitation of the Chair, the delegation of Poland took places at the Committee table.*

2. **Mr. Zieleniecki** (Poland) said that the Government's main social policy objective was to address negative demographic trends by creating incentives to promote parenthood. The number of care facilities for small children had increased six-fold in five years. Family benefits, including for parents of disabled children, had been raised and the eligibility criteria had been broadened in 2016. Families also received discounts on rail travel and shopping, as well as a child allowance. The main goals of the national housing programme for the period up to 2030 were to increase access to housing and to improve housing conditions.

3. A number of measures had been introduced to combat domestic violence: the Blue Card procedure was aimed at improving police response to complaints and the Act on Counteracting Domestic Violence was being amended to provide better victim protection and ensure family autonomy. Although surveys conducted in 2014 had shown that the level of domestic violence in Poland had fallen, further action was still needed; the Government would continue to address the problem through its programme for the prevention of domestic violence for 2014-2020. The State party had taken steps to bring its legislation into line with Council of Europe conventions and European Union directives on combating child pornography and the sexual exploitation of children. The law enforcement agencies were working closely with those of other States to combat online child pornography.

4. From 2017, local authorities would be obliged to offer kindergarten places to all children from the age of 3 and, as of the 2017/18 school year, schoolbooks would be provided free of charge to all pupils of primary and junior high schools. Improvements had been made in 2008 to the psychological and educational support available for disabled children. Vocational and in-service training had been adapted to the needs of the labour market. In the area of health care, spending had been increased from 40 billion zlotys (Zl) in 2007 to Zl 67 billion in 2015, and selected medicines, food and medical devices were now free for persons over 75 years of age. Work was under way on the national health programme for 2016-2020, which would focus on health promotion and prevention.

5. Despite the recent global economic crisis, labour market indicators were encouraging and unemployment had dropped to its lowest level in 25 years. Amendments to legislation had focussed on supporting the most disadvantaged groups — those under 25 or over 50 years of age — and a national vocational training fund had been established. New labour code provisions offered workers greater protection, with fixed-term contracts, a new obligation for employers to confirm the terms of a contract in writing before the contract start date and a guaranteed minimum wage for workers employed under civil-law contracts. A new Labour Code was being developed, the new social dialogue council had replaced the previous tripartite commission and a ruling by the Constitutional Court had extended trade union rights to persons employed under civil-law contracts and self-employed persons. The pension system review would take account of the conclusions of the discussions being held by the social dialogue council on key social security issues, with particular focus on support for the poorest pensioners and for disabled pensioners.

6. **The Chair** (Country Rapporteur) said that the Committee's primary concern was the status of the Covenant and the extent to which the rights under the Covenant were justiciable in the State party. It would welcome further clarification of the relevant paragraphs in the State party's replies to the list of issues, including paragraph 2, which referred to social rights only, and paragraph 4, which lacked examples of case law on the application of the Covenant. The State party's decision not to ratify the Optional Protocol was a source of concern. The Committee was also concerned by the 20 per cent decrease in the budget of the Office of the Commissioner for Civil Rights Protection in 2016 and the large proportion of that budget that was allocated to wages. The State party had set restrictions on the criteria which could not be used as grounds for discrimination, whereas, according to article 2 (2) of the Covenant, the list of such criteria should be open-ended. The unequal treatment of the Roma community and their continued difficult situation remained a source of concern. It appeared that gender equality legislation was not being enforced, since the national targets for the representation of women in political and public life, despite being lower than the Committee would have expected, had not been met. Lastly, he wished to know why the State party seemed to have regressed recently in terms of democracy and the rule of law, at a time when it might be looked to as an example by countries that were trying to establish the roots of democracy.

7. **Mr. Schrijver** said that, despite recent progress, unemployment levels remained high. The Committee would welcome some examples of the positive impact of measures taken by the Government, in line with its duties under article 65 (5) of the Constitution, to improve the situation and especially to combat long-term unemployment. It was unclear whether incentives for employers to provide jobs for unemployed people applied during a fixed period of time only and, if that was the case, whether the employees in question were generally offered continuing employment once that period had elapsed. The Committee would welcome further information on the changes to the Labour Code with regard to the minimum wage, including under civil-law contracts, and their effect. It would be useful to know how long the gender wage gap had been at its current level of 6.4 per cent, which was much lower than the European average, and whether it was increasing or decreasing. More information on the wage gap experienced by women in executive positions would also be welcome.

8. With regard to the protection of trade union members and leaders, he wished to know what follow-up had been given to the Constitutional Court ruling of June 2015 on the right to organize of persons working under civil-law contracts. Had the draft amendment to the Trade Union Act mentioned in paragraph 59 of the replies to the list of issues (E/C.12/POL/Q/6/Add.1) been adopted and implemented? The delegation should explain whether the State party had been able to develop mechanisms to guarantee the sustainability of pension schemes. It should also describe how the lowest pensions compared to the cost of living and what support had been provided to the persons who received them.

The meeting was suspended at 3.50 p.m. and resumed at 4.05 p.m.

9. **Ms. Maciejewska** (Poland) said that the Government took its obligation to implement the Covenant very seriously: the provisions of ratified international treaties were directly applicable, unless their implementation required the enactment of a law. The Covenant had been analysed and it had been concluded that a large number of its provisions did not establish individual rights that could give rise to a judicial remedy. It was therefore the responsibility of courts to implement the provisions independently. The Government had no immediate intention of ratifying the Optional Protocol to the Covenant, but would review its position once it had a clearer picture of the financial impact of ratification.

10. The Office of the Ombudsman was a constitutional and administrative body with which other administrative bodies were required to cooperate. Despite its budget having been cut in 2006, the Office had sufficient funding to perform its duties. In 2012 and 2013,

it had secured additional funding for recruitment to enable it to fulfil its mandate, which had expanded as a result of the ratification by Poland of the Convention on the Rights of Persons with Disabilities.

11. **Ms. Kamedula-Tomaszewska** (Poland) said that the purpose of the Act of 3 December 2010 on Implementing Certain European Union Provisions on Equal Treatment, which contained an exhaustive list of prohibited grounds of discrimination, was to incorporate the provisions of European Union directives into the domestic legal order. Prior to its adoption, the Act had been approved by a number of European Union institutions.

12. **Mr. Deptula** (Poland) said that the Act was part of a broad framework of protection against discrimination, the cornerstone of which was article 32 of the Constitution, which prohibited unequal treatment. Protection was also afforded under the Civil Code.

13. **Ms. Gajewska** (Poland) said that concerted efforts by the Government to improve the living conditions of the Roma community dated back to 2001, when the focus had been on the Carpathian Roma in Małopolskie province. In general, the Roma groups in Poland had quite young populations, with around 32 per cent of their members under the age of 20, and over 90 per cent of them lived in urban areas. As many of the challenges faced by the Roma stemmed from having a low level of education, the Programme for the integration of the Roma community in Poland for the periods 2004-2013 and 2014-2020 prioritized education. The success of the Programme was reflected in a 2011 evaluation of its implementation, which had demonstrated that the Roma held schools in high esteem. As part of efforts to create a Roma intelligentsia, scholarships were awarded to talented students. In 2016, 272 Roma had reported having completed higher education, in contrast to only 13 in 2002. In 2011, additional grants had been introduced to reduce the secondary school dropout rate. Over 60 Roma organizations now participated in the Programme, and the mechanisms introduced had been designed to continue to function after the Programme itself ended. In Małopolskie province, where many Roma lived in rural areas, 3,000 housing units had been partially or completely renovated, 103 flats had been purchased for Roma families and water and sewage systems had been built or improved.

14. **Ms. Kamedula-Tomaszewska** (Poland) said that the first electoral gender quota system had been adopted in 2011 for parliamentary, local and European elections. The system established a minimum quota, subsequently enshrined in the Electoral Code, of 35 per cent for candidates of each sex on electoral lists. In the 2014 elections to the European Parliament, 33 per cent of the 51 Polish candidates who had been voted in had been women. The Government was aware of the key role of the electorate in increasing women's participation in politics. For that reason, in the build-up to recent elections, the Office of the Ombudsman had publicly emphasized the importance of equal participation and had called on the leaders of political parties to take steps to promote gender equality. It had also adopted education measures and organized conferences, discussions and training courses.

15. **Mr. Kaczor** (Poland) said that the majority of judges and district court presidents in Poland were women.

16. **Ms. Wasilewska** (Poland) said that careful use was made of the funds available for employment assistance and therefore selected employers who, despite being under no obligation to do so, agreed to retain the services of new recruits beyond the initial period of support. Tools for professional development included tripartite training contracts concluded by the public employment service, employers and training institutions. Steps were taken to ensure that the persons offered such contracts possessed the skills required by employers, thereby increasing the likelihood of achieving sustainable employment. In July 2016, long-term unemployment had accounted for 56.7 per cent of total unemployment, down from 57.5 per cent a year previously. Special programmes tailored to the needs of long-term unemployed persons had been evaluated in 2014 and found to be 80 per cent effective.

Apprenticeships enabled people without experience to enter the labour market and had a success rate of over 60 per cent. The success of unemployment assistance had increased steadily since 2009.

17. **Ms. Bolesta** (Poland) said that fixed-term contracts were regulated by the Labour Code while civil-law contracts were regulated by the Civil Code; therefore, the safeguards contained in the Labour Code did not apply to civil-law contracts. The Labour Code had been amended to limit the possibility of terminating fixed-term contracts, thereby making them the same as permanent contracts. Under article 10 of the Labour Code, all persons had the right to freely choose their work, and provisions of the Labour Code, for example on annual leave, could be included in civil-law contracts. Those who believed that they were offered a civil-law contract as a means of circumventing the Labour Code were free to bring their case to the labour inspectorate. Social insurance legislation had been amended in January 2016 to require persons under civil-law contracts to contribute to the pension scheme. Minimum wage legislation had also recently been amended to introduce a minimum hourly rate that would apply to persons under civil-law contracts as of 2017. Failure to pay the minimum hourly rate carried a fine of Zl 1,000 to Zl 30,000.

18. **Ms. Sarzalska** (Poland) said that the gender pay gap was 7.7 per cent, compared to 16 per cent in the European Union, and had been nearly halved between 2007 and 2014. Data were scarce, but it was known that the gap was wider for higher positions. Workers had a right to equal pay for equal work and the Labour Code provided for a remedy and reparation in cases where workers considered their wages to be unfairly lower than those of another person performing a comparable task. Data collection on the topic was hindered by the fact that information on wages could only be disclosed with the authorization of the worker concerned, except in the case of public officials.

19. The Government, together with the Ombudsman and the European Union, had been developing an equal pay system since 2012. In 2013, the Government had spearheaded an audit of the civil service in order to measure the wage gap. The Ministry of Labour and Social Policy was designing tools to help employers identify the extent to which they were discriminating between their staff. In addition, in 2015, the Ministry had rolled out a large-scale project to encourage the promotion of women to higher positions in companies with over 250 employees; the project had been extended to smaller companies in 2016.

20. **Ms. Bras Gomes**, referring to a statement from the delegation according to which a court had ruled that article 9 of the Covenant was not justiciable because it did not contain a specific standard, asked whether the State party took account of the Committee's general comments in its judgments and policies. Pointing out that the prohibited grounds of discrimination in the European directives mentioned by the delegation were very limited, she wished to know whether there were any plans to adopt a comprehensive anti-discrimination framework. In that connection, she drew the State party's attention to the Committee's general comment No. 20. Noting that most people would not deliberately choose a non-standard form of employment unless absolutely obliged to, she asked what the Government considered its role to be in protecting the rights of those who could not obtain a permanent contract.

21. **Mr. Abdel-Moneim** pointed out that the interpretation of article 11 of the Covenant by the Supreme Administrative Court, as cited in paragraph 4 (3) of the replies to the list of issues, was somewhat restricted, given that the Covenant spoke not only of social security but of social insurance as well. Referring to Supreme Court Decision II UKN 374/99 of 8 February 2000, as quoted in paragraph 4 (2) of the same document, he said that the Court's arguments were all legally sound, but they did not reflect the way that the Committee had intended article 2 to be interpreted. Accordingly, the Committee might consider revising its general comments Nos. 3 and 9 in the light of the interpretation by the Polish courts.

22. **Mr. Schrijver** asked what the current youth unemployment figures were, what policy measures had been adopted to reduce them and how effective those measures had been. He requested further information on the rate of involvement of workers in trade unions, and particularly whether workers in the private sector were free to organize.

23. **Ms. Shin**, referring to the 35 per cent quota for both sexes on electoral lists, asked whether there were additional rules to prevent female candidates from being placed at the bottom of the list, thereby hindering their chances of being elected. Noting the very low representation of women in the Senate, she wondered how well the quota worked in practice. She requested data on the number of women in managerial positions and the judiciary. Information would also be welcome in respect of any targets, incentives or special measures designed to increase women's representation in political and public life. Recalling that the Committee on the Elimination of Discrimination against Women had highlighted the detrimental effect of stereotypes that were still commonplace in the media and in school textbooks, she asked what measures the State party was taking to change perceptions about gender roles in society and in the family. Lastly, welcoming the State party's efforts to narrow the pay gap, she wondered whether a system might be instituted whereby employers simply stated the requirements and wages associated with a given job position, as that could be conducive to ensuring equal pay for work of equal value.

24. **Mr. Uprimny** said that he did not agree that economic, social and cultural rights were not justiciable because their content was not fully established in the Covenant. In fact, the State was the duty bearer for those rights, which had to be either developed by statute or applied by judges. It was worth noting that the Constitutional Court had established the right to conscientious objection, a concept that was more abstract and less developed than the right to education as set forth under articles 13 and 14 of the Covenant; consequently, it was unclear why the right to conscientious objection should be justiciable, but not Covenant rights.

25. **Mr. Pillay** said that he wished to learn what steps had been taken to amend the Criminal Code to criminalize domestic violence and marital rape, to monitor and enforce compliance with protection orders issued against perpetrators of domestic violence, to end the use of reconciliatory mediation for victims of domestic violence and prosecute and punish perpetrators of such acts, to provide shelters offering protection and assistance for women who were victims of violence, and to collect, analyse and publish data on the reporting, investigation and prosecution of cases of violence against women and girls. He would also like to know what measures the State party had taken to address the acute shortage of institutional care for small children and whether it intended to adopt a comprehensive, long-term policy for the benefit of families. Noting that Poland had legislated against corporal punishment in all settings, he said that he would welcome clarification from the delegation as to whether it was still used in schools, youth centres and alternative care facilities. The State party should also explain what steps it had taken to ensure that women and girls who were victims of trafficking were identified at an early stage and had access to medical care, legal aid, psychological counselling and rehabilitation programmes, regardless of their ability or willingness to testify against traffickers.

26. The Committee would be grateful for information on any long-term measures adopted to address homelessness among refugees, asylum seekers and children. How did the State party intend to deal with the country's serious and deteriorating housing problem, which led to high rates of overcrowding, vulnerability to poverty and large numbers of young people still living with their parents? Information would be welcome on the steps taken to ensure that Roma families living in informal settlements were not subject to de facto segregation or forced evictions, especially in the light of reports that they had been asked to move to other municipalities without suitable alternative accommodation. The State party should outline the measures adopted to address the increasing number of

children at risk of poverty, as well as poverty affecting Roma families, single-parent families and families with multiple children or members with disabilities. On the right to food, it would be useful to know what was being done to ensure that children in rural areas and children from poor families had adequate access to food and nutrition, including food banks.

27. The delegation should indicate what steps had been taken to improve access to health-care services, given reports of long waiting times, a lack of services for persons with disabilities, limited access to dental and geriatric services, underfunding and lack of supervision of mental and psychological care services, and uneven geographical access to health-care services. The Committee would also like to know why Roma living in extreme poverty and undocumented migrants did not benefit from free medical care. Echoing the concerns expressed by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Committee would like information on: the prevalence of unsafe abortions and the obstacles encountered by women having legal abortions; the lack of systematic referral mechanisms when medical doctors invoked the conscientious objection clause; limited access to contraception; the requirement that minors obtain parental consent to visit a gynaecologist to receive treatment; and the lack of comprehensive, science-based sexual and reproductive health education and information.

28. **Mr. Kerdoun**, welcoming the State party's achievements in the area of education, asked how the Government proposed to address the exclusion from higher education of that part of the population that could not afford the fees. Information would also be appreciated regarding the Committee's concern that Roma students did not have proper access to schools, especially in rural areas, and had a very high school dropout rate at all levels of education. According to the Organization for Economic Cooperation and Development, the State party needed to accelerate the ongoing reforms to its higher education sector and adjust them to meet the needs of society and the economy. Continuing professional development for teachers also needed to be improved. The Committee wished to learn how the Government intended to address the problem of high repetition rates in secondary schools. The delegation should also give details of efforts to reduce the percentage of early school leavers, raise the proportion of university graduates and address the inequality in access to education based on ethnic or social origin. What was being done to improve the quality of higher education, including for extramural students? Clarification would also be welcome on how the State party guaranteed the right to take part in cultural life and cultural expression.

29. **Mr. De Schutter** asked how the State party intended to increase the percentage of babies exclusively breastfed at 6 months and improve the collection of data on breastfeeding. He asked whether the State party envisaged initiatives to regulate the marketing of junk food, snacks and sugary drinks to combat the rise in child obesity, for instance by raising the rate of value added tax on junk foods. In the light of the existing restrictions on access to abortion and further restrictions proposed in a bill currently before parliament, he would welcome the delegation's opinion as to the compatibility of those restrictions with the State party's obligations under the Covenant to guarantee the right to sexual and reproductive health.

The meeting rose at 6.05 p.m.